

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)	
MCC Telephony of Missouri, Inc.)	Case No. TE-2006-0415
of Compliance with the Requirement)	
of 4 CSR 240-32)	

**RESPONSE TO STAFF'S RECOMMENDATION AND
CONTINGENT REQUEST FOR HEARING**

Comes Now MCC Telephony of Missouri, Inc. ("MCC"), and in response to Staff's recommendation filed on or about July 11, 2006, submits the following to the Commission:

1. Relying on a memorandum submitted by Mr. Larry Henderson of the Telecommunications Department, Staff makes the following proposal with respect to MCC's waiver request:

The Staff's primary recommendation is for the Commission to delay issuing a decision in this case. The Staff recommends that the Commission open a case to consider whether to make revisions to the quality of service rules applicable to all telecommunications companies in lieu of considering a waiver solely for MCC. (¶ 3 of Staff recommendation)

2. MCC fully supports Staff's proposal that the **Commission should open a case for general industry wide consideration of the continued relevance of the quality of service rules in Chapter 32.** This recommendation is supported by the facts of the present application, the prospect of legislative changes at the federal level, and current cases pending before the Commission. Such an industry proceeding would be most helpful in redefining the regulations in light of newer technologies to the benefit of both consumers and service providers.

3. MCC also wishes to address certain aspects of Mr. Henderson's memorandum which, in MCC's opinion, contain some inaccuracies and misinterpretations. Placing MCC's request in context, it should be noted that MCC has successfully introduced an innovative

method of providing voice services that effectively competes with traditional Missouri telecommunications companies; offering quality service at competitive rates to Missouri consumers. The fact that MCC's customer base has seen substantial growth during the short period since launching service in Missouri (twelve to thirteen months) confirms the success of its model. Furthermore, MCC has reached this milestone with a record free of official customer complaints, a noteworthy achievement. It appears that Staff did not give adequate consideration to the manner in which MCC provides voice service. From the very beginning of its relationship with the Commission, MCC has been forthright about the mechanics of its proposed provision of service. When MCC made application for certification, it was explicit regarding its relationship with Sprint as well as the fact that MCC would be making use of third party facilities. It should be no secret to Staff that MCC's network structure is predominantly IP-based.

4. On page 8 of Mr. Henderson's memo, Staff claims that it "questions if MCC intends to comply with any of the Commission's quality of service requirements." Such a sentiment on the part of Staff is regrettable. In fact, MCC is working diligently to comply with the regulatory requirements of this Commission, not least because it is in its competitive interest to do so. However, Staff should remember that in its application for certification, MCC sought waiver of Missouri statutes and Commission regulations that were already inapplicable to competitive companies, and specifically at paragraph 24 of its application told the Commission that "MCC, pursuant to Section 386.570 RSMo, will comply with all applicable Commission rules **except those specifically waived by the Commission pursuant to MCC's request.**" New technologies for providing quality voice services at affordable prices inevitably require re-examination of rules created to regulate older systems and processes. During the course of its application before this Commission, MCC made clear that it might seek waivers of certain rules;

and Staff made no objection to the likelihood that MCC would request such waivers. MCC's present application for waiver should be no surprise to the Staff.

5. On page 3-4, Staff remarks that the copy of the MCC/Sprint agreement MCC provided pursuant to Staff's data request had several relevant portions redacted. The MCC/Sprint agreement is not Missouri specific, but rather covers the relationship between the parties on a nationwide basis. Staff so notes on page 3 of Mr. Henderson's memorandum. There are sections of the agreement which are of highly critical sensitivity to both MCC and Sprint. The agreement was provided primarily to clarify to the Commission the nature of the arrangement between MCC and Sprint with respect to provisioning voice service customers; and to that end, MCC felt that the redacted version was adequate. The Staff's written recommendation is the first time that MCC has been notified of Staff's belief otherwise. It would have been helpful had Staff informed MCC that certain information which it deemed relevant had been redacted. MCC would have certainly provided (confidentiality restrictions permitting) additional information had it been sought.

6. At the bottom of page 8, Staff states that "[i]n this instance, MCC has failed to demonstrate good cause and has *deliberately chosen to deny full access to requested information relevant to MCC's application.*" [emphasis supplied] MCC is dismayed that Staff chose to express such a view. MCC had responded to Staff's data request in good faith, and certainly did not deliberately withhold pertinent information from the Commission. As stated above, MCC would have been happy to provide additional information if it had been requested. It is MCC position that it has supplied good cause for the waiver sought and disagrees with Staff's assertion to the contrary. MCC trusts that it will have the full and fair opportunity at hearing, to provide arguments about the justification and the breadth of good cause to grant its application.

7. It appears to MCC that Staff's recommendation to deny the application is based more on its erroneous belief that information has been deliberately withheld, and not on the basis of the information supplied. Consequences of failing to comply with a Commission order compelling disclosure of discoverable matter might include denial of an application for waiver. The record in this case will attest that no motion to compel was filed against MCC. There are no grounds for Staff to base, in whole or in part, a denial of MCC's application on a contention that MCC inadequately responded to a data request.

CONTINGENT REQUEST FOR HEARING

8. MCC agrees that the Commission should establish a separate proceeding to consider possible amendments to the Commission's Quality of service standards. Until that case is decided by final order, MCC would respectfully request confirmation that the Commission will suspend enforcement of 4 CSR 240-32.080(5)(A)1. If the Commission decides not to open a special case as recommended by the Staff, then pursuant to the Commission's Order Setting Deadline to Request Hearing of July 14, 2006, MCC respectfully requests an evidentiary hearing on its application for waiver of the identified rule.

WHEREFORE, MCC respectfully requests that the Commission establish a separate proceeding in which to consider revisions to the quality of service rules applicable to all telecommunications companies as primarily recommended by the Staff, or alternatively, in the event the Commission does not establish such a separate proceeding, MCC requests an evidentiary hearing on its application, and that after hearing, the Commission enter an order granting MCC a waiver of compliance from the provisions of 4 CSR 240-32.080(5)(A)1.

Respectfully submitted,

/s/ Mark W. Comley

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 21st day of July, 2006, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov and Craig S. Johnson, at craig@csjohnsonlaw.com.

/s/ Mark W. Comley